

**BRIGHAM CITY PLANNING COMMISSION MEETING  
TUESDAY, DECEMBER 16, 2008 – 6:30 PM  
BRIGHAM CITY COUNCIL CHAMBERS**

<b>PRESENT:</b>	Joan Peterson	Chairperson
	Barbara Poelman	Vice Chairperson
	Paul Fowler	Commissioner
	Roger Handy	Commissioner
	Reese Nielsen	Commissioner
	Larry Jensen	Alternate Commissioner

<b>ALSO PRESENT:</b>	Ruth Jensen	City Council Liaison
	Mark Bradley	City Planner
	Eliza McGaha	Secretary

<b>EXCUSED:</b>	Lynda Berry	Commissioner
	Deon Dunn	Commissioner

**AGENDA:**

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*) for items not listed on the agenda.

PUBLIC HEARING <sup>2</sup> / APPLICATION #3085 / UPDATE AND REWRITE OF CHAPTER 29.13  
COMMERCIAL DISTRICTS

CONTINUATION OF APPLICATION #3029 / PRELIMINARY PLAT - KIRK NELSEN 1 LOT  
SUBDIVISION / 925 WEST 1075 SOUTH (GEORGIA DRIVE) / KIRK NELSEN

APPLICATION #3084 / UPLAND SQUARE DEVELOPMENT AGREEMENT / BRIGHAM CITY  
CORPORATION

DISCUSSION:

**REGULAR MEETING:**

Joan Peterson opened the regular meeting at 6:30 p.m. Roger Handy led the Pledge of Allegiance.

**APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES:**

**MOTION:** A motion was made by Barbara Poelman to accept the December 02, 2008 work session minutes. The motion was seconded by Reese Nielsen and passed unanimously.

Councilmember Ruth Jensen commented that she was listed as excused but she was present at the meeting.

**MOTION:** A motion was made by Reese Nielsen to accept the December 02, 2008 regular meeting minutes as modified to show correct attendance. The motion was seconded by Barbara Poelman and passed unanimously.

**PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*):**

There was no public comment.

**PUBLIC HEARING <sup>2</sup> / APPLICATION #3085 / UPDATE AND REWRITE OF CHAPTER 29.13 COMMERCIAL DISTRICTS:**

**MOTION:** A motion was made by Reese Nielsen to open the public hearing for application #3085. The motion was seconded by Barbara Poelman and passed unanimously.

There was no public comment.

**MOTION:** A motion was made by Reese Nielsen to close the public hearing for application #3085. The motion was seconded by Barbara Poelman and passed unanimously.

Mr. Bradley explained that some uses that are listed in the general commercial zone were moved to the industrial zone because it was felt they were a better fit for that zone. Most of the uses in processing and manufacturing belong in the industrial zone and some will be classified in other areas. Mr. Bradley went through the changes to the document with the Commissioners. The existing uses that will no longer be permitted in the general commercial (GC) and central business district (CBD) will be grandfathered in but no additional non-permitted uses will be allowed. Mr. Bradley suggested allowing residential in commercial zones only as a second or third story above or behind commercial. Mr. Handy suggested that a provision for homeless shelters should be looked at by the City Council prior to them receiving the updated list that does not include homeless shelters so they can determine a policy for them. In regards to the removal of beer outlets, which is an older term, it will be assumed that if there is a social club, billiards, or pool hall that liquor will go with that; it also includes the State liquor store, grocery stores and restaurants. Mr. Fowler voiced his concern about the general retail category being too generalized which may allow businesses such as sexually oriented businesses (SOB) into those areas or other things that may not be wanted in those areas.

In regards to the City Planner or designee having the authority to identify and categorize unlisted uses within the list of permitted or conditional uses, Mr. Handy suggested that there should be an appeal process to provide some recourse for that. Mr. Bradley commented that the language would be changed to reflect that the Community Development Manager or designee would have that authority rather than the City Planner. Ms. Poelman asked where the line was being drawn as to what is and is not put in and some specifics mentioned and others not. She suggested having a general category that does not mention everything specifically such as food processing. Ms. Poelman suggested adding plant materials/florist shop with greenhouse/nursery if specifics are going to be mentioned. Crisis nurseries should be classified in the same category as the protective shelters for women to maintain consistency.

Mr. Bradley said after some research with other communities he would report back with a definition of taxi stand/lot, which would be desirable to have in the CBD. Mr. Handy asked if rental of large equipment could be added to the category of freighting, trucking yard, or terminal. Mr. Bradley said

there could be two different line items but there would need to be definitions to distinguish small from large.

In regards to the area, width, frontage, yard, and coverage regulations Mr. Bradley said Staff would like to remove those paragraphs out of the table and have separate paragraphs for them in that chapter to eliminate confusion as they already apply to the zones. Ms. Poelman asked how McDonald's could build so close to the sidewalk if that language is already in that chapter. Mr. Bradley explained that in the commercial zone they can build up to the property line unless there is an easement. He commented that one of the conflicts he has with the commercial and residential in that zone is that homes are set back and commercial can be built right out to the sidewalk which takes out the conformity of that area. He said there are some things that need to be considered in those areas such as an overlay area with a certain setback.

As far as the number of stories and the maximum height a building can have, Mr. Bradley suggested a recommendation for change be made if the Commissioners wanted to change that in the commercial zone, which was a concern voiced previously. Comments were made in regards to reducing the stories allowed from seven to four or five. Multi-stories require an elevator. Mr. Bradley said he would check on the general feet per story and report back on that. Mr. Fowler commented in regard to the uses not listed section that he was in favor of bringing the code up to date with the current needs but did not want to leave the City open to whatever which may create problems in the future. Mr. Nielsen agreed with Mr. Fowler's comment and added that it may be better to leave a list of specific things in the table of either permitted or conditional uses in the CBD and GC districts; industrial things could be excluded from that area.

Mr. Nielsen suggested that a general comment could be added stating that specific uses not listed will be brought back to the Planning Commission as all uses cannot be foreseen and generalizations could allow something unfavorable to community standards. Mr. Handy cautioned that they need to be careful to base their decisions on the ordinances and State laws and not their own likes and dislikes. With a complete list of allowed uses fewer decisions would have to be made. Creating a list of things not permitted in specific categories was suggested. Changing this chapter will not have an effect on the development agreement because the development agreement creates a specific agreement for those uses. Mr. Bradley explained that the development agreement is more specific and will protect the City more than just the zoning ordinance.

**MOTION:** A motion was made by Reese Nielsen to continue application #3085 until the next Planning Commission meeting on January 06, 2009. The motion was seconded by Paul Fowler and passed unanimously.

#### **CONTINUATION OF APPLICATION #3029 / PRELIMINARY PLAT - KIRK NELSEN 1 LOT SUBDIVISION / 925 WEST 1075 SOUTH (GEORGIA DRIVE) / KIRK NELSEN:**

**MOTION:** A motion was made by Reese Nielsen to continue application #3029 until such time as the applicant requests it be brought back to the Planning Commission after his discussion with Staff and reaches suitable agreement on how to proceed forward. The motion was seconded by Paul Fowler and passed unanimously.

#### **APPLICATION #3084 / UPLAND SQUARE DEVELOPMENT AGREEMENT / BRIGHAM CITY CORPORATION:**

This application has gone to the Brigham City/Perry City Joint Advisory Board and they recommended this application to the Brigham City Planning Commission and the Perry City Council as the Perry City Planning Commission already approved it. The project is approximately 129-acres, 84-acres in Brigham City and 45-acres in Perry City. Mr. Bradley stated that they worked closely with Perry City to

try to have identical development agreements but a challenge came about with the type of zones that are established as well as the residential use. Staff tried to address the comments that were received from the Planning Commission from the discussion from the previous meeting regarding the residential, fast-food restaurants, dollar stores and check cashing stores. Mr. Bradley displayed a view of the proposed development area. He pointed out the area in the southwesterly corner where the pure residential would be located. Residential could be placed in other areas throughout the development if it is mixed in with other uses depending on the nature and design of the development. Perry's portion of the development is in the southeast section.

Mr. Bradley stated that Staff felt comfortable with the direction this is moving in, there are a few things that need the details worked out. Other than having a map attached to the agreement, another issue is to address the open space/recreation area for the residential. There are many different ways to provide residents some type of recreation space. Ms. Poelman said parks used to be put in new subdivisions in Brigham City and asked if parks are not being done anymore. Mr. Bradley replied that he was not sure if park lands were being primarily acquired through impact fees. He said anything less than a 5-acre area is hard for the Parks Division to maintain; it is better to have larger parks spread throughout a community. Mr. Handy commented that if the City gets development fees, a developer cannot be asked to build a park at the same time. Paul Morris, Upland Square Development representative, commented that they thought a good standard for the open space/recreation area was the suggested 200 square feet per unit with a minimum of 1,000 square feet up to the first five units and then 200 more square feet added per additional unit; which must be useable space. The details in that language need to be worked out. Mr. Morris stated that the concept was acceptable to them.

Ms. Poelman asked Mr. Morris to explain who gets the businesses to come in. Mr. Morris replied that they own the land and it depends on who they are going to partner with. They have been talking to very large builder-developer groups to partner with who have relationships with the big box retailers that are wanted to come in. It depends on what that relationship is going to be whether they take control of it or want to proceed in a joint venture and it also depends on who the first big user is and what kind of control they want to have. At this point they are unsure what that relationship is going to be.

Ms. Poelman commented that she was concerned that Perry would get all of the commercial and Brigham would have all the residential and some commercial. Mr. Morris stated that Perry's particular 45-acres is commercial and does not allow residential but they have allowed multi-family very close to this project and they are working on having someone come in and build it; which will be very good for all of the commercial pieces. Perry is also looking at a mixed use. The developer will look at the development area and determine where to place everything depending upon what is best for the development regardless of the city boundaries. Good planning requires treating the development as one parcel as best as can be done to do what makes sense. Mr. Morris stated that of the 84-acres in Brigham City at least 54-acres of that will be commercial and Perry will have 45-acres of commercial.

Mr. Bradley pointed out where 1200 West will be which is the section line to where Mr. Morris said they purchased the property. Mr. Morris said that they are willing to move more of the road onto their property if they need to and if it makes more sense.

Mr. Handy asked how serious the City and the developer are about the emergency station. Mr. Bradley replied that Brigham City's Emergency Services Director, Jim Buchanan, said there is a joint effort between Brigham City and Perry City to have an acre in that area for that service. The Joint Advisory Board included in their motion to have that looked at. Mr. Bradley said there are no more details on it, at this point. Mr. Morris commented that the first they heard of it was at the Joint Advisory Board meeting. He said they are interested in cooperating with both cities and if it helps the communities it would make a lot of sense to explore it.

Mr. Nielsen asked at what point the development agreement or plan will be submitted and asked when it is submitted if it will include more than a street plan and a generic plan of what the developer thinks they want to do, or if it will wait until some specific potential businesses are identified to move in there. Mr. Morris replied that the initial plan that will come back to the Planning Commission will be a street plan with a generic plan. Staff will be the approval authority on that. Mr. Nielsen commented that there is nothing that would preclude staff from approving a large apartment complex at the intersection of 1100 South and 1200 West. He said it is acknowledged that the City will expect the residential to be in the southwesterly section of the development but there is nothing in the language that requires it. Mr. Fowler read language that stated the agreement restricts residential use to 30-acres and requires that the residential develop occur further away from the prime corridor of 1100 South and 1200 West. Mr. Nielsen commented that it was not stated in the actual agreement itself. Mr. Fowler said they would have to add it as part of their stipulation. Mr. Nielsen specifically referenced page 17, exhibit C, paragraph B-2a of the agreement. He said there is no requirement, only an acknowledgement of what the City expects for certain parcels. Mr. Bradley said it should be on page 16 under additional restrictions on residential uses. Mr. Nielsen stated that there is nothing under the restrictions that require it to be located in a certain area in the development, which he thought to be the perception of some of the members.

Mr. Handy commented that the whole reason for a development agreement is to provide flexibility and streamlining of the process. He said that to a certain extent, as with any other development, Staff needs to be relied upon to protect the City. It is this Planning Commission that approved the idea of a development agreement and forwarded it to the City Council, who approved it. Mr. Handy said they need to trust the process now that they have the agreement. Mr. Morris stated that this is one expectation that will come back to the Planning Commission to show the basic plan of where the uses are as well as the master street plan. He pointed out where that is located in the agreement as well as where it states that the expectation is that the prime land on the top and sides of the development area will go for commercial and the residential will go near the bottom. Mr. Morris stated that they fully understand that the City's expectation is to have the southwesterly section of the area for the primary location for residential and commercial will be left at the top and other areas. He also said that if they showed up with a plan contrary to the expectations he would expect the Planning Commission to reject it.

Mr. Morris handed out copies of some suggested changes to the agreement which was mostly grammar corrections and vocabulary definitions. The street master plan will go to the Planning Commission and then to the City Council. Within one year of selling the parcels by metes and bounds, the developer will have to put it into a plat to have it officially recorded. Mr. Morris said the most likely first users will be on the Brigham City side and their assumption is they will stub in a street there. He said they will be back to the Planning Commission with amendments to the master street plan to add more of the street when they know more of where the street will go.

Mr. Bradley presented a map that will be attached to the legal description. The City Attorney has seen this agreement. The City Council has the same agreement as the Planning Commission with the exception of the suggested changes made by Mr. Morris. The City Attorney would have to do a final review on that prior to recording. Mr. Bradley said the City Attorney is comfortable with the agreement. Mr. Nielsen stated that his recommendation is to get a clean copy of the agreement with everything incorporated in it, including the map and possibly an outline of where 1200 West will be, for the Planning Commission to review prior to forwarding it with a recommendation for approval. Mr. Morris suggested not putting 1200 West in there because where that will be exactly is still uncertain.

In regards to the fast-food concern, Mr. Morris said he addressed that concern as the Café Rio exception by giving the City the discretion to determine if a particular restaurant is fast-food rather than watering down the definition of fast-food. He said Café Rio would technically fit the defined category of

fast-food but should not be considered a typical fast-food restaurant because it is not the traditional type of fast-food restaurant and it is a very favorable restaurant which most cities would like to have. The Brigham City and Perry City development agreements cannot be identical but they are as close as possible so as to not confuse the developer. Mr. Morris said the agreements are about 97-percent identical.

**MOTION:** A motion was made by Reese Nielsen to continue application #3084 until the meeting on January 06, 2009 and that a copy of the development agreement incorporating the developer's comments and incorporating the comments that City Staff has to make with respect to recreation or playground areas, incorporating the other incomplete areas of the agreement that the Commission has seen be provided to the Planning Commission members sometime in advance of the meeting, not the day or night before, so they have time to look at it. As soon as there is a copy that Staff has gone through and incorporated and reviewed and approved comments that the developer has provided and incorporated the comments the Staff wants to make be provided to the Planning Commission so they have sufficient time to review that rather than just one or two days before the meeting, the reason being is that he feels more comfortable with a completed document that they can look at. It is also his sense, correctly or incorrectly, that the Council is not going to approve it on this Thursday anyway as they have not had time to review it. Deferring it to January 6, 2009 to give the Planning Commission time to review a complete document to make a recommendation to them will not adversely affect or impact the final approval anyway. The motion was seconded by Barbara Poelman and passed unanimously.

**DISCUSSION:**

There was no discussion.

**MOTION:** A motion was made by Reese Nielsen to adjourn. The motion was seconded by Paul Fowler and passed unanimously.

The meeting adjourned at 8:30 p.m.

*This certifies that the regular meeting minutes of December 16, 2008 are a true and accurate copy as approved by the Planning Commission on January 20, 2009.*

Signed: \_\_\_\_\_

*Jeffery R. Leishman, Secretary*